IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO. 16 OF 2005
IN
M.J.PETITION NO.A-626 OF 2004

Mrs.Shubhada Milind Pol. ... Applicant.

Versus.

Mr.Milind Ashok Pol. ... Respondent.

Shri Gopal R.Hegde with Ms.Tara Hegde for the Applicant.

Ms.Mrunalini Deshmukh with Shri M.S.Kishore for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 22nd February, 2005.

**P.C.**:

1. Heard the learned Counsel appearing for the parties.

2. The Applicant is the wife and the Respondent is her husband. The Respondent has filed a petition for divorce against the Applicant which is pending in the Family Court at Pune. The Applicant-wife has filed a petition for maintenance under section 18 of the Hindu Adoption and Maintenance Act, which is pending in the Family Court at Bandra, Mumbai. The prayer in this Application is for a transfer of the petition for divorce filed by the Respondent husband to the Family Court at Bandra, Mumbai.

3. The grounds pleaded in support of the application by

the Applicant are set out mainly in paragraph 16 of the Application. The contention is that the Applicant is a house-wife and she has no source income. Her father has suffered severe heart attack as a result of which he was required to undergo a by-pass surgery and therefore, the Applicant has no support. The Respondent is avoiding to appear in the petition filed by the Applicant in the Family Court at Bandra, Mumbai. It is contended that the Respondent is a rich and affluent person and is in a position to visit Mumbai and he has sufficient resources to defend the proceedings. The learned Counsel appearing for the Applicant submitted that the proceedings filed by the parties are pending in two different Courts. The said proceedings should be heard by one and the same Court.

4. The learned Counsel appearing for the Respondent has placed reliance on the affidavit-in-reply of the Respondent. It is submitted that false statements have been made in the application for transfer. She stated that as a matter of fact divorce petition filed by the Respondent is earlier in point of time. It is also pointed out that in fact the Respondent has attended the Family Court in the petition filed by the Applicant and has even made application under section 10 of the Code of Civil Procedure 1908 for stay of the proceedings and the Roznama shows that the Respondent has attended the said proceedings. It is also pointed out that the

Applicant is a qualified Chemical Engineer. The learned Counsel also pointed out that the Respondent is ready and willing to pay necessary travelling expenses to the Applicant for attending the proceedings pending in the Family Court at Pune. It is also pointed out by the learned Counsel for the Respondent that a complaint has been filed by the Applicant against the Respondent and his close relatives in Chaturshrungi Police Station at Pune though an option was available to the Applicant to file the same in Mumbai. She further submitted that in any case the Applicant will have to travel to Pune for attending the criminal proceedings. She also submitted that jurisdiction under section 24 of the Code is not available for the persons like Applicant.

5. I have considered the rival submissions. It is true that an attempt has been made by the Applicant to state in the application that the proceeding filed by her is prior in point of time and that the Respondent is not attending the said proceedings. However, the fact remains that the Applicant and the Respondent have filed proceedings in two different Courts. It will be in the interests of both the parties if the proceedings are heard by one and the same Court. Merely because the Respondent is ready and willing to pay travelling expenses to the Applicant is no ground to reject the application. If the Application for transfer is rejected by this Court, the Applicant will have to

attend both the Courts. The Respondent has not chosen to file an Application under section 24 of the Code of Civil Procedure, 1908 for transfer of proceedings filed by the Applicant to the Family Court at Pune but has applied for stay of the proceedings pending in the Family Court at Mumbai.

6. In this view of the matter, a case for transfer of the Petition filed by the Respondent at Family Court at Pune to the Family Court at Mumbai is made out. Accordingly, the Application is allowed in terms of prayer clause (b) with no order as to costs. After the proceeding from the Family Court at Pune is transferred to the Family Court at Mumbai, the Family Court at Mumbai will issue notice to the parties intimating the date fixed for hearing of the matter.

7. It is made clear that notwithstanding the order of transfer, the application made by the Respondent under section 10 of the Code will be decided by the Family Court on its own merit.

8. The parties and the concerned Courts will act on the authenticated copy of this order.

Judge.